IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 93 OF 2007

IN

L.C. SUIT NO. 329 OF 2003

LEENA KHEMA SINGH ... APPELLANT
(Orig. Plaintiff)

Versus

THE MUNICIPAL CORPORATION OF GR. MUMBAI & Anr. ... RESPONDENTS
(Orig.Defendants)

Mr. Anil R. Mishra for the Appellant.
Mrs. Geeta Joglekar for B.M.C.
Mr. Pravin G. Sawant for Respondent No.2.

CORAM: A.M.KHANWILKAR,J.

DATE : 8th February, 2007.

P.C.

1. Heard Counsel for the parties.

2. Essentially, two points were made to assail the judgment of the lower Court which is impugned in this Appeal. Firstly, it is contended that the Trial Court in para 3 of the judgment has noted that the Authority has considered all the relevant documents, including reply dated 15th January, 2003 which was factually incorrect. Secondly, it is contended that at least two documents which were pressed into service along with the reply dated 15th January, 2003 will have direct bearing on the point in issue. Inasmuch as the photopass issued in favour of Singh Ravima Puran (at pages 124 & 125 of the Paper Book) and the letter sent by Shantabai Puransingh to the Sub-Engineer, Bombay Municipal Corporation, dated 11th February, 1961 (at page 126) would establish the position about existence of the first floor in relation to which suit notice has been issued.

3. The argument canvassed before this Court cannot be the basis to discard the well reasoned judgment of the trial Court which is impugned in this Appeal. Indeed, the Appellant is justified in making grievance that the trial Court has wrongly recorded that the Authority considered the reply dated 15th January, 2003. However, that by itself, in my opinion, is not enough to reverse the judgment under Appeal which is otherwise

well-reasoned. Even the argument founded on two documents, viz. photopass and the letter dated 11th February, 1961 (at page 126) which are now pressed into service for the first time before this Court will be of no avail to the Appellant. This is so because, I have no hesitation in affirming the finding of fact reached by the trial Court that the City Survey Plan of CTS No.103 which was pressed into service by the Appellant was not an authentic and genuine document. However, the correct position is reflected from the Plan produced by the Defendant No.2. From that Plan, it was obvious that there was no structure of the kind the Appellant claims to be in existence at the relevant time. The trial Court is, therefore, justified in recording the finding that the documents produced by the Defendant No.2 would belie the claim of the Appellant-Plaintiff.

Insofar as the document now pressed into service, viz. the photo-pass is concerned, the reasons which weighed with the trial Court for discarding the documentary evidence produced by the Appellant in the shape of agreement dated 12th March, 1989, Electricity Bill and Water Bill, the same will have to be invoked in relation to the photo-pass. The photopass makes no mention about existence of the suit structure, viz. first floor which is the subject matter of the Notice under Section 351. Thus understood, the photopass will be of no avail. The

only other document which is pressed by the Appellant before this Court, being letter dated 11th February, 1961 although makes reference to the height of the first floor as 7’- 6". However, that structure is stated to be on City Survey No.72, Hissa No.2 admeasuring 11’.5" x 33’.00" x 21’.5". There is nothing on record to indicate that the description of the structure referred to in the said letter corresponds with the description of the structure referred to in the suit notice under Section 351 which pertains to the first floor structure on CTS No.103. Besides, I am inclined to affirm the opinion recorded by the trial Court in para 8 of the impugned judgment that the Plaintiff has failed to give proper description of the suit property. For all these reasons, no interference is warranted.

A.O. is dismissed.

(A.M.KHANWILKAR,J.)